

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL ACTION FILE
)	
GUSTAVO ADOLPHO RAMIREZ-REYES,)	NO. 1:16-CR-006-07-ELR/AJB
)	
Defendant.)	

**UNITED STATES MAGISTRATE JUDGE’S
FINAL REPORT AND RECOMMENDATION**

Before the Court is Defendant Gustavo Adolpho Ramirez-Reyes’s motion to suppress geo-location evidence, [Doc. 261]. For the following reasons, the undersigned **RECOMMENDS** that the motion be **DENIED**.

In his motion, Ramirez seeks to suppress the fruits of the collection by the Government of historical cell site data about his cell phone, which data was obtained by a court order, as opposed to by search warrant supported by probable cause. [*Id.* at 2]. Ramirez recognizes that in *United States v. Davis*, 785 F.3d 498 (11th Cir. 2015) (en banc), the Eleventh Circuit held that law enforcement may obtain historical cell site data by way of a court order issued pursuant to 18 U.S.C. § 2703(d), and that the Government does not need to obtain a search warrant based on probable cause. [Doc. 261 at 2]; *see also Davis*, 785 F.3d at 511. He explains that he filed the

motion solely to preserve a challenge should the Supreme Court disagree with *Davis*. [*Id.* at 2].

This Court is bound to follow *Davis*. *Cf. Tharpe v. Warden*, --- F.3d ----, ----, No. 14-12464, 2016 WL 4479295, at *___ (11th Cir. Aug. 25, 2016) (recognizing that appellate panel and district court bound by en banc decision of Court of Appeals). Therefore, *Davis* controls and the Government could obtain historical cell site data about Ramirez's cell phone through a § 2703 order and did not need to obtain a search warrant to obtain this information.

In addition, Ramirez's motion sought more time to further explore this issue, [Doc. 261 at 3], and at one of the pretrial conferences, the Court gave Defendant and his co-defendants until June 13, 2016 to file further motions or to perfect already-filed motions. [*See* Doc. 269]. No additional reasons were raised for suppressing the historical cell site data.

Accordingly, the undersigned **RECOMMENDS** that Ramirez's motion to suppress geo-location data, [Doc. 261], be **DENIED**.

The Court has now ruled on matters related to Defendant Ramirez that have been referred to it. Accordingly, Defendant Ramirez's case is **CERTIFIED READY FOR TRIAL**. However, since matters related to this Defendant's co-defendants are still

pending before the undersigned, it is not necessary to place this Defendant's case on the trial calendar at this time.

IT IS SO RECOMMENDED and CERTIFIED, this 26th day of August, 2016.



ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE